IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.9507/06
Hariom Galav Vs. The District Collector
Baran & Anr.

S.B. Civil Writ Petition No.9958/06
Mohd. Ashfak Vs. District Collector, Baran
& Ors.

30.04.2007

***Hon'ble Mr. Justice Mohammad Rafiq***

Shri U.P. Gaur for petitioner.
Shri R.S. Rathore, Addl. Advocate General
Shri Mahesh Gupta for respondent.

Shri R.S. Rathore, the learned Addl. Advocate General prays for vacation / modification of the interim order passed by this Court on 12.12.2006.

In the facts of the case when the arguments which are being advanced for application for vacation / modification of the stay order are same as in the main petition, therefore, both the petitioners

are being heard and decided finally by this common order.

Heard learned counsel for the parties and perused the material on record.

Shri U.P. Gaur, the learned counsel for the petitioner argued that four out of fourteen signatories to the no confidence motion are not entitled either to sign such motion or even to participate in the proceedings. According to him, one of the members Shri Prem Shankar Galav had already been declared ineligible to hold the office of Sarpanch of the Gram Panchyat, Mangrole, Distt. Baran by letter dated 6.1.2005. Later he contested the municipal elections. Another member Jagannath Suman had been declared disqualified to continue as member having had third child after the cut off date of 27.11.1995 in view of Section 26 of the Rajasthan Municipalities Act, 1959 and

other two members namely Abdul Razzaq and Radha Kishan Meena were guilty of making illegal encroachments over the public land.

Learned counsel for the petitioner submitted in the second petition that although when no confidence motion was passed on 14.12.2006 Shri Mohd. Ashfaq was the Vice Chairman. Out of 17 members, 16 voted in favour of the motion and therefore the motion was taken to have been carried out. Learned counsel however relies on the new provisions introduced by the Government in the Rajasthan Municipalities (Motion of No-confidence against Chairman and Vice Chairman) Rules, 2007 by which the earlier Rules of 1974 were repealed. Rule 3(5) of the Rules of 2007 provides that in order to carry out the motion, three-fourth of the number of eligible members shall be required for the quorum. He therefore

submitted that even if the notice for taking the no confidence motion was served, within the promulgation of aforesaid rules if now the meeting takes place, it has to abide by the newly framed rules.

Shri R.S. Rathore, the learned Addl. Advocate General however opposed the writ petition and argued that so long as the duly elected members are not disqualified to hold the office, the office held by them cannot be declared as vacant. He submits that merely because one of the members was disqualified to remain as Sarpanch in the previous term, if subsequently he has enrolled himself as voter of the Municipal Board and on that basis contested the election and got elected, he cannot be said to be disqualified to participate in the process of no confidence motion. So far as second

member Jagannath Suman with regard to whom the grievance of the petitioner is that he has been declared disqualified, it was argued that the aforesaid order dated 14.12.2006 was based on the pre-election disqualification and Jagannath Suman challenged the same in the order of his suspension dated 13.12.2006 and the enquiry on that basis before this Court in S.B. Civil Writ Petition No.320/07 in which the operation of the said order has been stayed. Even otherwise, the Larger Bench of this Court in Smt. Sameera Bano Vs. State of Raj. & Ors., D.B. Civil Special Appeal (W) No.236/06 has now authoritative decided that the government in exercise of its administrative powers cannot unseat a duly elected member on the basis of pre-election disqualification. For other two members also he argued that merely because some

action has been initiated against them, they cannot be debarred from participating in the proceedings of the board. It was argued that 14 members out of 20 have proposed the no confidence motion and even if four members are excluded, requirement for proposing no confidence motion both in the old rules and new Rules being 1/3rd of total members, this cannot be taken to be an illegality. He therefore prayed that both the writ petitions are liable to be dismissed.

Having heard the learned counsel for the parties, I find that the none of the four members who have signed the co confidence motion can be taken to have become disqualified by mere reason of the aforesaid facts pointed out by the learned counsel for the petitioner. Moreover, even if four members out of 14, who have signed

the motion are excluded, notice on the strength of 10 members would still remain valid, therefore, the process of no confidence motion cannot be halted. But additionally on examination of the validity of the motion carried out against Vice Chairman, I do not find any reason to hold that those four members did not have the right to participate in the elections because so far as the suspension of Jagannath Suman is concerned, that suspension order is stated to have been passed on 23.12.2006 whereas the motion of no confidence was taken up for discussion on 14.12.2006, therefore, as on the date on which the meeting for discussing the no confidence motion was carried out, he had not yet been suspended. For other two members also it cannot be said that merely because the government had either decided

to initiate or had initiated the action against them for any alleged misconduct, they would loose the right to participate in the process of no confidence motion. So far as the argument of learned counsel for the petitioner that now if the no confidence motion is taken up for discussion as per the new Rule 3(5) of the Rules of 2007, third-fourth of the number of eligible members shall be required for the quorum, I find that the argument to this extent is liable to be upheld because when the motion is actually being carried out, the old rules having been repealed, such old would be taken to have been completely wiped out from the statute book and therefore the new rules in force as on the date would hold field and accordingly form basis for deciding as to what would be required number of the members for quorum.

However Rule 4 in regard to repeal and saving makes it clear on the subject that any action taken or anything done or order passed under the repealed rules shall be deemed to be taken or done or passed under the new rules which would mean that even if the notice for no confidence was given in the old rules, such notice shall remain valid for the purpose of discussing such no confidence motion and finally carrying out the same. I therefore do not find any merit in either of the writ petitions.

Both the writ petitions are therefore dismissed with no order as to costs. However, in Civil Writ Petition No.9507/06, the respondents shall now be free to proceed in accordance with law to fix any date for taking up the motion for no confidence.

**RS/-** **(Mohammad Rafiq),J.**